

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re

PRO PAGE PARTNERS, LLC,

Debtor.

No. 00-22856
Chapter 7

MARY FOIL RUSSELL, Trustee,

Plaintiff,

vs.

CARLETON A. JONES, III,

Defendant.

Adv. Pro. No. 03-2042

MEMORANDUM

APPEARANCES:

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court on the plaintiff's motion to strike the defendant's demand for a jury trial. Because the only issue to be resolved in this proceeding is a question of law to which there is no right to a jury trial, the motion to strike will be granted.

I.

As set forth in the complaint which initiated this proceeding and admitted in the answer, the debtor Pro Page Partners, LLC was a Tennessee limited liability company engaged in the business of marketing and selling paging and cellular communication services to customers in East Tennessee. The defendant Carlton A. Jones, III, was a member of Pro Page, holding a 30% membership interest. In connection with a restructuring and sale of the membership units of Pro Page, the defendant entered into a Redemption and Indemnification Agreement dated December 30, 1998 (the "Indemnification Agreement"). The defendant and two individuals named Mark Halvorsen and Joe S. Potter are collectively referred to in the Indemnification Agreement as "Guarantors" while Joseph K. Reid and Lawrence H. Reid are jointly referred to as "Sellers." Under the terms of the Indemnification Agreement, Pro Page and the Guarantors, jointly and severally, agreed to indemnify and hold the Sellers harmless against all claims asserted against Sellers "as a result of the operation of [Pro Page] and/or [Pro Page's] business, including, without limitation, any liability asserted against Sellers arising from personal guaranties to Kenesaw Leasing."

On October 23, 2000, almost two years after the execution of the Indemnification Agreement, Pro Page filed for bankruptcy relief under chapter 11, but subsequently converted the case to chapter 7 on September 4, 2001. Mary Foil Russell was appointed chapter 7 trustee.

On April 16, 2003, Ms. Russell, in her capacity as trustee, sought and obtained a judgment against

Joseph K. Reid in the amount of \$319,699.05 in an adversary proceeding in this bankruptcy case styled *Mary Foil Russell, Trustee v. Joseph K. Reid*, No. 02-2027. Thereafter, by Assignment Agreement dated June 30, 2003, Mr. Reid assigned to Ms. Russell “all of his right, title and interest in the Indemnification Agreement including the right to pursue collection of the Judgment against the defendant [Carlton A. Jones, III].”

As a result of the assignment, Ms. Russell, as trustee, commenced the instant adversary proceeding against the defendant on August 13, 2003. It is alleged in the complaint that the plaintiff trustee as assignee of Mr. Reid “is entitled to enforce the Indemnification Agreement against the defendant in the place and stead of Mr. Reid”; that the judgment against Mr. Reid “arises from the business and operations of Pro Page”; and that the defendant “is legally bound by virtue of the Indemnification Agreement to indemnify Joseph K. Reid in full for the Judgment or to pay the amount of the Judgment together with interest earned thereon to the plaintiff.”

In his answer filed December 16, 2003, the defendant admits that the trustee obtained a judgment against Mr. Reid, but denies that “the Judgment arises from the business and operations of Pro Page” or that “the Judgment debt is within the scope of the Redemption and Indemnification Agreement.” In his prayer for relief, the defendant requests: (1) dismissal for lack of jurisdiction; (2) alternatively, a transfer to United States District Court “because the trustee’s claim is a non-core proceeding”; and (3) a jury trial. Subsequently, in a Statement filed January 23, 2004, the defendant advises that he does not “consent to entry of final orders or judgment by the Bankruptcy Judge or to have the jury trial conducted by the Bankruptcy Judge.”

In furtherance of the foregoing, the defendant on February 6, 2004, filed a motion pursuant to 28

U.S.C. § 157(d) requesting that the district court withdraw from the bankruptcy court its reference of this adversary proceeding. The motion was opposed by the plaintiff and met with the her motion filed February 25, 2004, to strike the defendant's jury demand. In an order entered April 20, 2004, the district court denied the withdrawal motion "because this is a core proceeding that arises from the Trustee's administration of the bankruptcy estate, judicial economy will not be served by withdrawing the reference, withdrawal of the reference would cause undue delay and increase the cost to the parties, and withdrawal of the reference will not result in judicial uniformity but will result in forum shopping." The order concluded that "this adversary proceeding will remain in the United States Bankruptcy Court for the Eastern District of Tennessee."

II.

Presently before this court is the plaintiff's motion to strike the defendant's jury demand and the defendant's response in opposition to the motion. The plaintiff contends that the defendant has lost his right to a jury trial by filing a proof of claim in the bankruptcy case and because of his other appearances in this case, including the prosecution of an administrative expense claim and an objection to a motion by the trustee to sell assets free and clear of liens. According to the plaintiff, by taking these actions the defendant "has subjected himself to this Court's equitable power, thereby relinquishing any right to a jury trial in this case." In response, the defendant asserts that the plaintiff's action against him is legal in character and that as such he has a constitutional right to a trial by jury. Furthermore, he denies that a waiver of his right to a jury trial has occurred "[b]ecause the trustee is suing Mr. Jones in a matter totally unrelated to the claims-allowance process."

This court concludes that it is unnecessary to determine whether the defendant has waived any right that he may have to a jury trial. As set forth in the complaint and answer, the only issue to be decided in this adversary proceeding is purely a legal one: Did the trustee's judgment against Mr. Reid arise "as a result of the operation of [Pro Page] and/or [Pro Page's] business" and thus fall within the scope of the Indemnification Agreement? If so, the defendant is liable to the trustee pursuant to the assignment from Mr. Reid to the trustee. If not, no liability exists and the complaint must be dismissed.

"The interpretation of a written contract is a matter of law." *Carolyn B. Beasley Cotton Co. v. Ralph*, 59 S.W.3d 110, 113 (Tenn. App. 2001). *See also State v. Cozart*, 54 S.W.3d 242, 246 (Tenn. 2001)(citing *Hopkins v. Nashville, Chattanooga & St. Louis Ry.*, 96 Tenn. 409, 34 S.W. 1029, 1040 (1896) ("The province of the jury is appropriately limited to questions of fact, while questions of law should be determined by the trial judge.")); *Someday Baby, Inc. v. Entertainment Int'l*, 1998 WL 30669, *3 (Tenn. App. 1998)("Where the interpretation of a written contract is necessary for the decision of a court, the general rule is that such interpretation is a matter of law, and not of fact."). It is clear that "irrespective of the legal or equitable nature of the claims, there is no right to a jury trial when the claim involves only questions of law." 6 NORTON BANKR. L. & PRAC. 2d § 143:12 (2004)(citing *McFarland v. Leyh (Matter of Texas Gen. Petroleum Corp.)*, 52 F.3d 1330 (5th Cir. 1995); *McGraw v. Betz (In re Bell & Beckwith)*, 112 B.R. 863 (Bankr. N.D. Ohio 1990); *Valley Forge Plaza Assocs. v. Fireman's Fund Ins. Cos.*, 107 B.R. 514 (E.D. Pa. 1989)). *See also Monroe Auto Equip. Co. v. Heckethorn Mfg. & Supply Co.*, 214 F. Supp. 704, 706 (W.D. Tenn. 1993)(no requirement of jury trial on legal issues, only that jury trial be had on factual questions involved in legal issues); *Pardini v. S. Nev. Culinary & Bartenders Pension Plan and Trust*, 733 F. Supp. 1402, 1405 (D. Nev. 1990)(noting that when a

particular inquiry usually does not require the resolution of factual issues, no right to a jury trial arises); *Winslow v. Lehr*, 646 F. Supp. 242, 243 (D. Colo. 1986)(“The power of the judge to pass upon questions of law is just as much an essential part of the process of trial by jury at common law guaranteed by the seventh amendment, as is the power of the jury to pass upon questions of fact.... [E]ven at common law as codified in the seventh amendment, the right to jury trial was qualified by the judge’s right to decide questions of law.”).

III.

Accordingly, based on the foregoing, the plaintiff’s motion to strike the defendant’s jury demand should be granted. An order will be entered in accordance with this memorandum.

ENTER: September 24, 2004

BY THE COURT

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE